

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



OFFICE OF THE DISTRICT ATTORNEY

County of Allegheny

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November 21, 2019

Adrien Salzberg
MuckRock News
DEPT MR 83513
411A Highland Ave
Somerville, MA 02144-2516

In re: Open Records Request

Dear Ms. Salzberg ,

I am the Open Records Officer for the District Attorney of Allegheny County. On November 20, 2019, I received your Right to Know request dated that same day, in which you asked for the following:

“Any and all records from January 1, 2019, to the date this request is processed, concerning election complaints forwarded to the county from the Pennsylvania Department of State. A spreadsheet showed that in 2019, 10 election complaints were submitted to Allegheny County including 1 instance each of bribery/coercion and poll worker violations, and 8 other complaints. Responsive documents would include investigations into these complaints and the findings of the district attorney.”

First, the Right to Know Law exempts certain materials from disclosure, and 65 P.S. § 67.708 (b)(16), provides as follows:

(16) A record of an agency relating to or resulting in a criminal investigation, including:

(i) Complaints of potential criminal conduct other than a private criminal complaint.

(ii) Investigative materials, notes, correspondence, videos and reports.

(iii) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.

(iv) A record that includes information made confidential by law or court order.

(v) Victim information, including any information that would jeopardize the safety of the victim.

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

(B) Deprive a person of the right to a fair trial or an impartial adjudication.

(C) Impair the ability to locate a defendant or codefendant.

(D) Hinder an agency's ability to secure an arrest, prosecution or conviction.

(E) Endanger the life or physical safety of an individual.

Notably, any records held by this Office regarding "election complaints" would have been provided to or obtained by the Allegheny County District Attorney's Office as part of the criminal investigation, and are therefore, exempt from disclosure pursuant to 65 P.S. §§ 67.708 (b)(16). Moreover, the fact that a criminal investigation is closed is of no moment, because, as the Office of Open Records has explained, Section 708(b)(16) expressly protects relating to the result of a criminal investigation and thus remain protected even after the investigation ends. *See Jones v. Pennsylvania Game Commission, OOR Dkt. AP2009-0196. See also Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa.Cmwlt. 2011).

Second, if any such information existed, it would be for the purpose of determining whether any crime had been committed, and therefore, would be "investigative information" which the Pennsylvania Criminal History Records Information Act ("CHRIA") prohibits the District Attorney from disseminating. Under CHRIA, "Investigative information" is "information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." 18 Pa.C.S.A. § 9102 The District Attorney is a "Criminal Justice Agency", 18 Pa.C.S.A. § 9102, 37 Pa.Code § 601.2, and CHRIA prohibits the District Attorney from disseminating investigative information to anyone other than criminal justice agencies. 18 Pa.C.S.A. § 9106(c)(4), 9121(d); 37 Pa.Code § 601.7; *In Re: Pittsburgh Citizen Police Review Board*, 16 Pa. D.&C. 5th 435 (2010), *aff'd.*, 36 A.3d 631, (Pa.Cmw. 2011), *app. denied*, 615 Pa. 793 (2012); *Department of Auditor General v. Pennsylvania State Police*, 844 A.2d 78 (Pa.Cmw. 2004); *In Re: Cullen*, 2007 Pa. D.&C. Dec. LEXIS 1 (2007).

Accordingly, even assuming that this Office were to possess any information matching your request, I must decline your request for these reasons.

Please be advised that pursuant to Section 1101 you have 15 days to appeal my decision to the Open Records Appeals Officer for the District Attorney of Allegheny County. His name is Michael W. Streily. His address is: Office of the District Attorney, 401 Courthouse, 436 Grant Street, Pittsburgh, PA 15219.

Very truly yours,

/s/ Kevin F. McCarthy,
Kevin F. McCarthy
Assistant District Attorney
Open Records Officer